



## **SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION**

### **5 CFR Part 9301**

**RIN 3460-AA04**

### **Freedom of Information Act and Privacy Act Procedures**

**AGENCY:** Special Inspector General for Afghanistan Reconstruction.

**ACTION:** Interim final rule.

**SUMMARY:** The Special Inspector General for Afghanistan Reconstruction (SIGAR) proposes to amend its Freedom of Information Act regulation to comply with the FOIA Improvement Act of 2016. The FOIA Improvement Act of 2016 requires, among other things, that agencies update the procedures for proactive disclosures, disclosure requirements, and the circumstances under which agencies can charge search and duplication fees.

**DATES:** This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Address all comments concerning this proposed interim final rule to William B. Gaertner, Associate General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. Comments will be made available for inspection upon written request. SIGAR will make such comments available for public inspection in the Office of Privacy, Records, and Disclosure, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. You can make an appointment to inspect comments by telephoning (703) 545–6000. All comments, including

attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** William Gaertner, Associate General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202, (703) 545-5994.

**SUPPLEMENTARY INFORMATION:** On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), which created SIGAR to conduct independent and objective audits, investigations and analysis to promote economy and efficiency, and to detect and deter waste, fraud, and abuse in the reconstruction of Afghanistan. The Freedom of Information Act (FOIA), as amended, provides for access by the public to records of executive branch agencies, subject to certain restrictions and exemptions. In order to establish procedures to facilitate public interaction with SIGAR, the agency published 5 CFR part 9301 setting forth SIGAR's regulations governing the access provisions of those statutes and Executive Order 12958. On June 30, 2016 the President signed into law the FOIA Improvement Act of 2016 (Pub. L. No. 114-185) requiring that agencies make available for inspection in an electronic format records that have been requested three or more times, notify requesters of the right to seek dispute resolution services from the Office of Government Information Services (OGIS) when agencies extend time limits by more than ten additional working days, and limiting the circumstances under which agencies may charge requesters search fees. This interim final rule implements these changes to the FOIA. The changes will alter 5 CFR parts 9301.5, 9301.6, and 9301.8.

## **II. The Interim Final Rule**

This interim final rule amends portions of SIGAR's existing regulation implementing provisions of the FOIA (5 U.S.C. § 552). The provisions of this amendment shall apply to all components of SIGAR. The FOIA provides for the disclosure of agency records and information to the public, unless that information is exempted under delineated statutory exemptions under the FOIA. The procedures established here are intended to ensure that SIGAR fully satisfies its responsibility to the public to disclose agency information, but continues to safeguard sensitive information properly.

#### **Procedural Requirements:**

This Interim Final rule amends SIGAR's regulations implementing the FOIA to facilitate the interaction of the public with SIGAR. SIGAR's policy of disclosure follows the Presidential Memorandum of January 21, 2009, "Transparency and Open Government," 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance, advising Federal agencies to apply a presumption of disclosure in FOIA decision making. This Interim Final Rule incorporates portions the FOIA Improvement Act of 2016, signed into law by the President on June 30, 2016. SIGAR has determined that good cause exists to publish this amendment to its FOIA regulations as an interim final rule. This amendment maintains SIGAR's compliance with the FOIA and those amendments to the FOIA adopted in the FOIA Improvement Act of 2016. SIGAR has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Finally, notice of proposed rulemaking is not required, because the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. It has been determined that this rulemaking is

not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Dated: December 16, 2016.

**John F. Sopko**

Inspector General

### **List of Subjects in 5 CFR Part 9301**

Administrative practice and procedure, Freedom of information.

### **Authority and Issuance**

For the reasons set forth above, SIGAR amends 5 CFR part 9301 as follows:

### **PART 9301—[AMENDED]**

1. The authority citation for part 9301 continues to read as follows:

Authority: 5 U.S.C. 552; Pub. L. No. 110-175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR 75373-75377, 3 CFR, 2006 Comp., pp. 216-200.

2. Section 9301.5 is revised to read as follows:

### **§ 9301.5 Accessing records without request**

Certain SIGAR records, including the agency's Quarterly Report, audit reports, testimony, oversight plans, press releases, other public issuances, and records that are required by 5 U.S.C.

§ 552(a)(2) to be made publicly available are available electronically from SIGAR's homepage at

<http://www.sigar.mil>. SIGAR encourages requesters to visit its Web site before making a request for records under § 9301.6.

3. In § 9301.6, paragraphs (c)(1)(ii), (c)(3)(i), and (d)(1) are revised to read as follows:

**§ 9301.6 Requesting records.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. SIGAR will indicate, if technically feasible, the amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion was made. SIGAR will also indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemptions. The notice shall also describe the procedure for filing an appeal. SIGAR will further notify the requester of their right to seek assistance from SIGAR's FOIA Public Liaison or dispute resolution services from the FOIA Public Liaison or the Office of Government Information Services.

\* \* \* \* \*

(3) \* \* \*

(i) *In general.* If the FOIA Officer determines that unusual circumstances exist, the FOIA Officer may extend for no more than ten days (except Saturdays, Sundays and Federal holidays)

the time limits described in paragraph (c)(1) of this section by providing written notice of the extension to the requester. The FOIA Officer shall include with the notice a brief statement of the reason for the extension and the date the FOIA Officer expects to make the determination. If the extension goes beyond ten working days, the FOIA Officer will include a notification of the requester's right to seek dispute resolutions services from the Office of Government Information Services.

\* \* \* \* \*

(d) \* \* \*

(1) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's written decision may request SIGAR's FOIA Appellate Authority to review the decision. Appeals must be delivered in writing within 90 days of the date of the decision and shall be addressed to the FOIA Appellate Authority, Office of Privacy, Records & Disclosure, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to Fax appeals to (703) 601-3804 or email to *sigar.pentagon.gencoun.mbx.foia@mail.mil*. An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Appellate Authority should grant the appeal.

\* \* \* \* \*

4. In § 9301.8, paragraph (f)(3) is added to read as follows:

**§ 9301.8 Fees in general.**

\* \* \* \* \*

(f) \* \* \*

(3) SIGAR determines that unusual circumstances apply to the processing of a request, provides timely notice the requester, and delay is excused for an additional ten days, but SIGAR still fails to respond within the timeframe established by the additional delay. This provision applies only to search fees. However, the following exceptions shall apply:

(i) Notwithstanding § 9301.8(f)(3), if SIGAR determines that unusual circumstances apply and that responding to the request requires the production of more than 5,000 pages, SIGAR may continue to charge search fees, or duplication fees for requesters in preferred status, for as long as necessary, after timely written notice has been made to the requester and SIGAR has discussed with the requester how the requester could effectively limit the scope of the request via written mail, electronic mail, or telephone, or made three good-faith attempts to do so.

(ii) Notwithstanding § 9301.8(f)(3), if a court determines that exceptional circumstances exist, SIGAR's failure to comply with a time limit shall be excused for the length of time provided by the court order.

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